

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

BMADDOX ENTERPRISES LLC,

Plaintiff,

v.

MILAD OSKOUIE, OSKO M LTD, and  
PLATINUM AVENUE HOLDINGS PTY, LTD,

Defendants.

Case No. 1:17-cv-01889-RA

**DECLARATION OF JUSTIN  
MERCER IN OPPOSITION TO  
COUNTER DEFENDANTS'  
MOTION FOR RULE 11  
SANCTIONS**

MILAD OSKOUIE and PLATINUM AVENUE  
HOLDINGS PTY, LTD,

Counterclaimants,

v.

BMADDOX ENTERPRISES LLC and  
BRANDON MADDOX,

Counterdefendants.

I, Justin Mercer, Esq., declare under penalty of perjury that the following is true and correct:

1. I am an attorney duly admitted to practice in the State of New York, and am admitted to this Court. I am an associate with the law firm Lewis & Lin, LLC, a four-lawyer office including myself and David Lin (“Mr. Lin”), which represents Defendants/ Counterclaimants Milad Oskouie (“Mr. Oskouie”) and Platinum Avenue Holdings Pty, Ltd. (“Platinum,” collectively with Mr. Oskouie “Counterclaimants”) in this action. I received my B.A. from Amherst College in 2006 and a J.D. from the Georgetown University Law Center in

2011. I have six and one half years litigation experience, with a focus on intellectual property matters.

2. I submit this declaration upon personal knowledge and if called as a witness could and would testify to the matters set forth herein.

3. Our firm was first contacted by Mr. Oskouie regarding the instant action on June 12, 2017. Beginning on or around June 14, 2017, Lewis & Lin was formally retained by Counterclaimants and commenced discussions with Mr. Oskouie regarding his defenses to the allegations asserted in the Complaint, as well as potential claims against BMaddox Enterprises LLC (“BME”) and its principal, Brandon Maddox (“Mr. Maddox”, collectively “Counter Defendants”).

4. All of the work I did on this matter was done in conjunction with the supervision and regular discussion with Mr. Lin, who was familiar with and approved of everything I did. I kept Mr. Lin regularly informed of my discussions with Mr. Oskouie, and Mr. Lin was present during several of my telephone conversations with Mr. Oskouie.

5. As of June 12, 2017, we were aware that the preliminary injunction hearing was scheduled for June 29, 2017, but we continued to collect and review evidence in order to both oppose the preliminary injunction and draft possible counterclaims.

**A. Initial Due Diligence in Opposition to Preliminary Injunction**

6. As a threshold matter, via telephone on or around June 15, 2017, Mr. Oskouie told us that he denied the allegations of copyright infringement and hacking set forth in the Complaint, and that the history of the dispute between the parties stretched back over a year, during such time that Counter Defendants engaged in the activity that eventually became Counterclaimants’ Counterclaims.

7. Specifically, Mr. Oskouie informed us that:
  - a. Mr. Oskouie independently created content for the website FFLTrust.com, which sold educational materials comprised of mostly public information for people seeking to get a federal firearms license (“FFL”);
  - b. That a competitor, Mr. Maddox, had been accusing him of copyright infringement and hacking for over a year, and he responded to DMCA notices and engaged Australian counsel to dispute Mr. Maddox’s claims;
  - c. Mr. Maddox falsified documents in connection with his various DMCA notices and submitted in this lawsuit;
  - d. Mr. Maddox registered [miladoskouie.com](http://miladoskouie.com) and was posting derogatory/defamatory content on it;
  - e. Mr. Maddox sent Mr. Oskouie’s parents harassing/defamatory letters;
  - f. Mr. Maddox falsely reported Mr. Oskouie to law enforcement officials in Australia; and
  - g. Mr. Maddox had been calling Mr. Oskouie a “hacker” and is trying to associate him with Islamic extremism.

8. At the time, Mr. Oskouie informed us that Platinum’s website <FFLTrust.com> was down, and that over the course of Counter Defendants’ long history of harassment, his website hosting provider and email server were subject to DDoS attacks in March of 2016. In addition, for the same reasons, Platinum had to change website hosts at least twice during 2016. As a result, Mr. Oskouie did not have access to emails sent from @ffltrust.com email accounts, nor contemporaneous, live versions of his WordPress™ website as it existed in February to December of 2016. Thus, Mr. Oskouie also informed us that he no longer was in possession of

any screenshots of his website. However, he explained that while his site was down, his current developer (who was not Mr. Ciobanu) did have backups of the website.

9. Shortly after our initial conversation with Mr. Oskouie, on or about June 15, 2017, he provided us documents tending to support Mr. Oskouie's version of the events—including contemporaneous letters exchanged between the parties' Australian counsel which were consistent with the allegations he made to us via telephone, and that were attached to Mr. Oskouie's Declaration in Opposition to Plaintiff's Application for a Preliminary Injunction ("First Oskouie Decl."). *See* [ECF No. 27].

10. On or about that same date, Mr. Lin informed me that he spoke to Mr. Oskouie's Australian counsel via telephone, Mr. Robert Haralovic. According to Mr. Lin, Mr. Haralovic confirmed the veracity of Mr. Oskouie's allegations of the history of the dispute dating back several months, and that Mr. Oskouie could provide additional documents supporting Counter Defendants' defamatory campaign.

11. After receipt of Mr. Oskouie's first set of documents, Mr. Lin and I focused on being able to corroborate Mr. Oskouie's claims of non-infringement by, *inter alia*, (i) comparing the four excerpts of Counter Defendants' FFL guide included in the Complaint with the ATF's website; and (ii) asking Mr. Oskouie a series of questions regarding how was the guide drafted and the website created. Mr. Oskouie explained that he engaged a freelance developer, Mr. Stefan Ciobanu, to create the website and drafted, edited and compiled much of his FFL Guide from months of research, reviewing the ATF Website, and reading blog posts about FFLs.

12. To confirm this, on or about June 21, 2017, I reviewed the ATF Website and discovered that much of the specific content from the four excerpts provided by Counter Defendants was copied, mostly verbatim, from the ATF's Website.

13. Thereafter, on June 21, 2017, I had another phone call with Mr. Oskouie regarding his first set of documents, the ATF Website, and requested a copy of Platinum's FFL Guide.

14. On or about June 23, 2017, Mr. Oskouie provided us with PDF printouts of Platinum's entire FFL Guide, as it appeared hosted on his developer's server as of that date.

15. Thereafter, on June 23, 2017, I had another phone call with Mr. Oskouie regarding the PDFs and requested an electronic copy of the WordPress™ website which hosted the existing FFL Guide.

16. On or about June 23, 2017, Mr. Oskouie provided us with backup SQL versions of his WordPress website. On our call, Mr. Oskouie represented to me that the backup contained the live version of his website as it existed at all relevant times.

17. After receipt of same, I personally downloaded software that could enable a user to convert .SQL data and view it as if the site was live, including but not limited to Sequel Pro™.

18. I then showed the electronic SQL backup to Mr. Lin and we both compared same to the excerpts of BME's guide in the Complaint, as well as the version of a website that BME claimed was FFLTrust.com. We then determined that live version on the SQL backup and the version of a website that BME claimed was FFLTrust.com were substantially different.

Thereafter, we discussed in detail what evidence, if any, Mr. Oskouie had to establish that the SQL backup version was as it existed.

19. Because I could and did see various content from the backup on a WordPress™-style dashboard in my version of Sequel Pro™, I also noticed the software included dates of publication of the various links to webpages that comprised Platinum's FFL Guide—the same guide that Mr. Oskouie provided PDF versions of on June 23, 2017. As a result, we included a

screenshot of such publication date information [Exhibit M to ECF No. 27], to support our reasonable belief that Mr. Oskouie's claims of independent creation were true.

20. On or about June 23, 2017, I could see, within the SQL backup, a list of users who had signed up for access to Platinum's FFL Guide and/or email list. Given that Platinum's former developer Mr. Ciobanu's name and email appeared on that list, whereas no email readily appeared as belonging to Mr. Maddox, I reasonably believed that the evidence supported Mr. Oskouie's belief that Mr. Maddox may have coordinated with Mr. Ciobanu to produce the versions of the website that appeared in the Complaint (which appeared to be logged in as Mr. Ciobanu), but that were not active on the real version of website. At a minimum, I determined that further discovery from BME, and possibly from Mr. Ciobanu, would confirm and corroborate Mr. Oskouie's supposition.

21. On June 26, 2017, I had another phone call with Mr. Oskouie regarding the website backup, the list of users, as well as the various counterclaims he had. Thereafter, Mr. Lin and I focused on being able to corroborate Mr. Oskouie's potential counterclaims and to dispute the claims of dissipation.

22. During our call on June 26, 2017, Mr. Oskouie represented to me that neither he, nor Counterclaimants, did or were doing anything to frustrate a judgment in this action and would aggressively seek relief on its counterclaims. Thereafter, Mr. Oskouie provided me with copies of bank statements from both businesses, as well as his personal bank statements, during relevant times. Based on my review of the statements provided, I determined that all visible charges appeared legitimate and that, prior to the initiation of this dispute, Mr. Oskouie did not appear to be transferring large sums of money other than in the normal course of business. Notwithstanding same, I called and emailed Mr. Oskouie about various items I saw on his bank

statements, which he explained to me.

23. In addition to Mr. Oskouie's documents, I performed various Google searches regarding FFLs, Counter Defendants, FFL123.com and FFLTrust.com to understand the basis of some of BME's conclusory allegations in the Complaint, as well as confirm Mr. Oskouie's versions of the events. On the basis of information from the Google searches and review of documents, I had subsequent emails and phone calls with Mr. Oskouie to elucidate and elaborate the allegations that would form the basis of his declaration in opposition to the preliminary injunction.

24. Given the short period of time between our retention, the receipt of documents and information from Mr. Oskouie, and the date of the preliminary injunction hearing, we drafted our opposition to the preliminary injunction on the basis of the information we had at the time and expected to continue to investigate our clients' possible counterclaims thereafter. However, most, if not all of the documents that we used to substantiate our clients' allegations were included as *exhibits* to Mr. Oskouie's declaration.

**B. Due Diligence after receipt of Counter Defendants' Reply on June 29, 2017**

25. On or about June 29, 2017, we received BME's reply in further support of its preliminary injunction (the "PI Reply") [ECF No. 28].

26. The PI Reply purported to assert four "new" allegations which BME claimed disproved Counterclaimants' allegations in opposition:

- a. That "Osco M Ltd.'s" name was on a version of the website, such that our statement that it had no "material involvement" was false;
- b. That the version of the website in the complaint must be Counterclaimants because the name "Henry Jackson" appeared on:

- i. A third-party forum post from 2016; and
  - ii. A “cached version” of an “FFL Insider Report” published on FFLTrust.com;
- c. That there was other evidence of “actual copying” in the form of:
- i. Terms of use that included “Minnehaha Co.”; and
  - ii. URLs on both websites that were similar;
- d. That our claims of “little to no access to emails” during March 2016 was false because Mr. Maddox’s mother-in-law purportedly received an email from an @ffltrust.com email account on March 9, 2016.

27. On the same June 29, 2017, after returning from the hearing, Mr. Lin and I had a phone call with Mr. Oskouie to discuss the additional allegations in the PI Reply. Thereafter, Mr. Lin and I specifically investigated each of the claims and determined that either (i) Counterclaimants already stated their position with respect to the authenticity of BME’s evidence in the Opposition and/or (ii) no response or correction was necessary.

28. Specifically, with respect to the claim of no “material involvement,” Mr. Oskouie reaffirmed his prior statement to us as to Osko M Ltd.’s business activities as separate from Platinum and, based on same, we employed the use of the legal term of art “material.” In other words, we determined that, in our professional judgment, the use of the phrase “no material involvement” was substantially true based upon Mr. Oskouie’s representations and our review of the relevant materials, such that no response or correction was necessary.

29. Specifically, with respect to the claim of “Henry Jackson” appearing on a third-party website and in an FFL Guide, we queried Mr. Oskouie regarding same. Given the fact that Mr. Oskouie’s responses were consistent as what was live on his website, our review of the .SQL

backup, the fact that the forum post was and is hearsay, that the appearance of “Henry Jackson” elsewhere was and is irrelevant to BME’s claims of copying, we determined that no response or correction was necessary.

30. With respect to the claim of “actual copying,” Counterclaimants already addressed the issue with the URLs specifically in the Opposition, concluding that this is common SEO practice and not indicative of the wholesale hacking that BME claims it did. Notwithstanding same, we investigated those issues in the same manner as above, and determined that, because BME’s claims as to those uses were ultimately nonactionable, no response or correction was necessary.

31. With respect to the claim of “little to no access to emails” being false, we presented documentary evidence from Platinum’s website and email host to back up Mr. Oskouie’s statements—in fact, we demanded that Mr. Oskouie produce such information in our initial due diligence, and he did. As such, we stood by our representations in the Opposition as to Platinum’s inability to access emails.

32. Furthermore, Mr. Maddox’s mother-in-law’s email address was not in the list of users as of June 23, 2017 that we had *before* we had notice of same in the PI Reply. Thus, we determined that someone with access to Mr. Maddox’s mother-in-law’s email address may have signed up for email. However, given the above demonstrative evidence of loss of email use, the evidence of DDoS attacks, Mr. Oskouie’s denial of hacking, and the fact that Platinum’s MailChimp email account was deactivated sometime in March 2016, we determined that Mr. Oskouie’s statements were supported by the evidence available at the time, such that no response or correction was necessary.

33. In sum, BME presented no evidence either in the Complaint, nor in the PI Reply,

that we felt conclusively established the position that it and Counter Defendants' counsel claims it did, such that no response or correction was necessary *prior to any discovery*.

**C. Due Diligence on Issues in Counterclaims and TRO**

34. Prior to filing the Counterclaims on July 25, 2017, Mr. Lin and I did substantial research on BME and Mr. Maddox and attempted to corroborate Mr. Oskouie's statements that supported the counterclaims with specific evidence.

35. Much of the evidence in support of Counterclaimants' claims of, *inter alia*, non-infringement of copyright, false DMCA notices, defamation, unfair competition, Lanham Act violations, tortious interference, and intentional infliction of emotional distress were already included in Mr. Oskouie's Declaration in Opposition. As a result, Mr. Lin and I determined what legal claims supported the multitude of wrongful conduct instituted by Counter Defendants.

36. However, to further support Counterclaimants' claims of computer hacking by Mr. Maddox, Mr. Oskouie provided us with additional evidence.

37. Specifically, on July 6, July 17, July 18 and July 19, either Mr. Lin or I had various phone calls with Mr. Oskouie to discuss, *inter alia*, recent letters from Mr. Maddox received by Mr. Oskouie's parents, Mr. Maddox's registration and use of domain names in competition with Counterclaimants, and Mr. Oskouie's belief that Mr. Maddox employed hackers to take down Platinum's website.

38. Between July 13 and July 19, 2017, Mr. Oskouie provided us with various documents supporting Mr. Maddox's attempt to hack and take down Platinum's website, including extortionist emails from third parties claiming to act on behalf of Mr. Maddox and contemporaneous screenshots provided to Mr. Oskouie wherein Mr. Maddox appeared to be requesting third parties do his bidding for him. Given the nature of the threats, Mr. Maddox's

apparent role, and the fact we already had (and presented) emails from Platinum’s website hosting provider, Root, S.A., confirming the existence of DDoS attacks, we determined that Counterclaimants could and should expand their counterclaims to include legal causes of action for this activity—which, at times, shut down Platinum’s website.

39. On or about July 24, 2017, Mr. Oskouie provided us with additional evidence and instances of use of his name MILAD OSKOUIE. On that same date, I personally conducted Google web searches of uses of Mr. Oskouie’s personal name. Some of Mr. Oskouie’s evidence, as well as some of the results of my web searches were included as exhibits to Mr. Oskouie’s Declaration in Support of the Temporary Restraining Order. *See* [ECF No. 34].

40. Finally, given our review of the ATF’s website and other WordPress websites, the similarities between them and BME’s excerpts of its FFL Guide and its website, our research into the FFL educational materials market, and BME’s role in same, we determined that Counter Defendants’ claims of copyright infringement were at best legally baseless, if not an outright fraud on the Copyright Office.

41. Prior thereto, on or about July 5, 2017, Counter Defendants’ counsel emailed Mr. Lin a “settlement offer” in which Counter Defendants offered, *inter alia*, to conclude the instant copyright lawsuit—which claims we already determined to be baseless—and transfer the <MiladOskouie.com> and <AustralianHacker.com> domain names to BME for \$300,000. *See* [ECF No. 35].

42. Thereafter, on July 25, 2017, a little over a month and a half after our involvement with this case, we filed the instant Counterclaims [ECF No. 32], motion for a temporary restraining order [ECF No. 33], Mr. Oskouie’s declaration in support [ECF No. 34], and Mr. Lin’s Declaration in Support [ECF No. 35].

43. On July 27, 2017, counsel for Counter Defendants responded in opposition to Counterclaimants' motion for a TRO, purporting to (i) assert other instances of Mr. Oskouie's "lying," which largely reiterated the claims made in the PI Reply, and (ii) dispute the case law that supported our legal positions in the motion for a TRO. *See* [ECF No. 37].

44. Given the fact that we had already considered and reviewed the relevant evidence that supported Mr. Oskouie's statements, and the fact that Counter Defendants' reply raised no new issues, we determined that no response or correction was necessary as to the factual allegations contained in either the Counterclaim, nor in Mr. Oskouie's Declaration at ECF No. 34.

**D. Due Diligence after receipt of Counter Defendants' "Rule 11 letter" on August 12, 2017**

45. On or about August 12, 2017, counsel for Counter Defendants sent us a letter attaching what they purported to be a proposed Rule 11 Motion ("Rule 11 Letter"). *See* [ECF No. 56-1]. The Rule 11 Letter and the "motion" (i) reiterated, in conclusory fashion, the same assertions that Counter Defendants' counsel previously made, i.e., that "a significant amount of evidence on the record contradict[ed] your client's declaration," and (ii) claimed other evidence, without identifying what other evidence existed, "contradicts the factual assertions upon which your client's defenses and counterclaims are dependent."

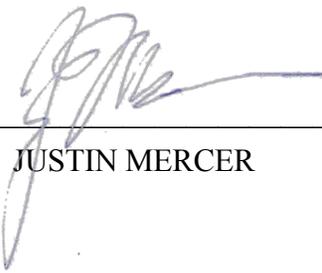
46. Given how little the Rule 11 Letter stated and our investigation detailed above, we determined that no response or correction was necessary as (i) to the factual allegations contained in either the Counterclaim or (ii) to the legal causes of actions we believe supported those well-pled facts.

47. In short, the Rule 11 Letter stated nothing new that we had not already determined

was supported by demonstrative evidence, or could be substantiated by further party discovery—  
which to date, none has occurred.

48. I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 12, 2017



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JUSTIN MERCER